

Persons engaged in the business of selling alcoholic beverages to purchasers for use or consumption are required to remit sales tax to the Department upon their gross receipts from such sales, notwithstanding the fact that manufacturers and importing distributors of alcoholic beverages are required to pay certain taxes under The Liquor Control Act of 1934 (235 ILCS 5/1-1 et seq.)” See 86 Ill. Adm. Code 130.2060. (This is a GIL).

January 25, 2000

Dear Xxxxx:

This letter is in response to your letter dated December 20, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing you to check if a double state tax charge being put on alcoholic drinks by a nearby restaurant is legal. I had three drinks and asked the bar waitress why the tax on them (Atch 1). I have been going there for years and this added tax was never applied. She said it was for a new food tax and all places are charging it. I asked her for a copy of the bill and she said I could have this one. On another visit several weeks ago the same thing happened, but I did not think of asking for a copy of the bill. I go to other restaurants/bars nearby and locally and none of them charge this extra food state tax for liquor drinks.

When I got home, I phoned BUSINESSSS and spoke with the general manager PERSON. He said they started charging the state food tax on alcoholic drinks to make it easier for the waitresses to figure the bill. That they had begun this practice several months ago. I inquired don't the drinks already have a built-in state liquor tax on their price, and he said yes. This makes alcoholic drinks being charged with two state taxes, when no food is ordered, which does not appear lawful to me. I asked PERSON if these added state food taxes are being sent to the state. He answered yes.

I would appreciate you responding to this letter and telling me, (1) if this added state food tax is legal when liquor is also being charged the state liquor tax? Also, (2) is this restaurant sending you this added food state tax on liquor and not keeping it? Thank you.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition). These two taxes are complimentary in nature and together are commonly referred to as the “sales tax.”

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding tax on food, medicine and medical appliances under the Retailers' Occupation Tax Act. As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes.

Products that do not meet the appropriate definition of food or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks and alcoholic beverages are always taxed at the higher rate.

The Liquor Control Act of 1934 imposes a tax upon the privilege of engaging in business as a manufacturer or as an importing distributor of alcoholic liquor. See 235 ILCS 5/8-1 et seq. (1998 State Bar Edition). This gallonage tax on liquor is imposed upon "manufacturers" and "importing distributors," not consumers. However, it is passed onto consumers as part of the price of liquor.

We have reviewed your bill and it correctly imposes the sales tax on liquor. The sales tax rate for Fairview Heights is 7.25% which when applied to a bill for alcoholic beverages for \$10.25, equals 74 cents in tax. The Liquor Tax, as explained above, is generally passed on to consumers in the price charged for the liquor, while sales tax is generally added on at the time of the sale.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.